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9 **UNITED STATES DISTRICT COURT**

10 EASTERN DISTRICT OF CALIFORNIA

11
12 COMMERCIAL CREDIT GROUP, INC.,

Case No. 1:21-cv-00936-JLT-SKO

13 Plaintiff,

**FINDINGS AND
RECOMMENDATIONS THAT
PLAINTIFF'S AMENDED MOTION
FOR DEFAULT JUDGMENT AND
APPLICATION FOR WRIT OF
POSSESSION BE
GRANTED**

14 v.

15
16 NO LIMIT LOGISTICS, INC., et al.,

(Docs. 28, 65)

17 Defendants.

OBJECTIONS DUE: 21 DAYS

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/
20 **I. INTRODUCTION**

21
22 On June 13, 2023, Plaintiff Commercial Credit Group, Inc. (“Plaintiff”) filed an amended
23 motion for default judgment (the “Motion”) against Defendant No Limit Logistics, Inc. (“Defendant
24 No Limit Logistics”) and Defendant Oupkarpreet Singh Jugpal (“Defendant Jugpal”) (collectively,
25 “Defendants”). (Doc. 65.) No opposition to the Motion has been filed. (See Docket.) The Motion
26 is therefore deemed unopposed. The hearing set for July 19, 2023, on the Motion was vacated and
27 the matter was taken under submission. (Doc. 67.)

1 For the reasons set forth below, the undersigned RECOMMENDS that the Motion be
2 GRANTED.¹

3 **II. FACTUAL BACKGROUND²**

4 Plaintiff provides heavy equipment and accounts receivable financing to construction,
5 manufacturing, transportation, and waste industries. (Doc. 1 (“Compl.”) ¶ 2.) Defendant Jugpal is
6 the president of Defendant No Limit Logistics and signed the agreement that serves as the basis for
7 this litigation. (Compl. ¶¶ 3–4.)

8 On October 29, 2018, Defendants entered into an agreement for a loan secured by personal
9 property collateral from Plaintiff. (Compl. ¶¶ 1, 8; *see also* Ex. 1 pp. 1–5; Ex. 2 at p. 1.) According
10 to the terms of the agreement, Defendant granted Plaintiff a lien in collateral consisting of three
11 2016 Utility Reefer Trailers with Carrier 7400Xs identified as follows: (1) VIN No.
12 1UYVS2538GU406823 with Carrier serial no. 0615UA4116; (2) VIN No. 1UYVS2534GU406821
13 with Carrier serial no. 0115UO6477; and (3) VIN No. 1UYVS2532GU406817 with Carrier serial
14 no. 0115U06550 (“the Trailers”). (Compl. ¶¶ 1, 8, 12; *see also* Ex. 1 pp. 1–5; Ex. 2 at p. 1.) The
15 Trailers have a combined approximate total value of \$185,850 based on market comparisons for
16 trailer models of similar type and age. (Comp. ¶ 11.)

17 The agreement provided that Defendants would pay Plaintiff in consecutive monthly
18 installments. (Ex. 1 at p. 1.) The first installment was due on October 29, 2018, the second
19 installment was due on December 15, 2018, and each consecutive installment thereafter was due on
20 the same date of each month until the total amount of the debt was paid in full. (*Id.*) The agreement
21 also set forth the rates for charges as to late installments and interest upon default. (*Id.*)

22 Pursuant to the agreement, Plaintiff filed a UCC Financing Statement on November 1, 2018.
23 (Compl. ¶ 9; Ex. 3 at pp. 1–2.) Each Trailer’s Certificate of Title issued by the State of California
24 listed Plaintiff as the registered lienholder, thereby confirming Plaintiff’s security interest in the

25 ¹ The motion for default judgment is referred to the undersigned by E.D. Cal. Local Rule 302(c)(19) for the entry of
26 findings and recommendations to the assigned district judge. *See* 28 U.S.C. § 636(b)(1)(B).

27 ² Upon entry of default, “the factual allegations of the complaint, except those relating to the amount of damages, will
28 be taken as true.” *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987) (quoting *Geddes v. United
Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977)); *see also* Fed. R. Civ. P. 8(b)(6) (“An allegation—other than one relating
to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied.”).
Accordingly, the factual background is based on the allegations of the complaint. (*See* Doc. 1.)

1 Trailers as collateral and the lien pursuant to the agreement between the parties. (Compl. ¶ 9; Ex. 4
2 at pp. 1–3.)

3 Almost immediately after signing the agreement, Defendants stopped making the monthly
4 payments. (Compl. ¶ 10.) The last payment by Defendants was received on January 15, 2019, and
5 was applied to the past-due installment due on the December 15, 2018. (*Id.*) The loan remained
6 past due for the installment due on January 15, 2019, and for all subsequent payments. (*Id.*) On
7 April 9, 2019, Plaintiff demanded payment of the outstanding amounts, but Defendants failed to
8 make any payment. (*Id.*)

III. PROCEDURAL BACKGROUND

10 Plaintiff filed a complaint against Defendants on June 11, 2021. The complaint asserts one
11 claim for possession of personal property, the Trailers, and the prayer for relief seeks possession of
12 the Trailers, as well as time, energy, and costs incurred in pursuing recovery of the Trailers
13 “according to proof,” for costs of suit incurred, and for such other relief as the Court may deem
14 proper. (Doc. 1 at 4.) On August 28, 2022, Plaintiff filed a notice of application for writ of
15 possession as to the three Trailers. (Doc. 28.) Defendants were served with the complaint and the
16 writ of possession on September 13, 2022. (See Docs. 34–37.) Neither Defendant has filed an
17 answer or taken any action expressing an intent to defend against the lawsuit. (See Docket.)

18 Plaintiff requested entry of default against Defendants on October 12, 2022, which was
19 entered by the Clerk of Court that same day. (*See* Docs. 40, 41.) Plaintiff then filed its original
20 motion for default judgment on October 19, 2022 (“the Original Motion”). (Doc. 42.) The next
21 day, the Court issued a minute order setting forth the deadlines for responses to the Original Motion,
22 and directed Plaintiff to file on the Court’s docket proofs of service upon Defendants of (1) the
23 Original Motion and (2) the minute order. (Doc. 43.)

24 Over the following months, Plaintiff filed multiple status reports detailing its inability to
25 serve Defendant Jugpal. (See Docs. 44, 47, 49, 51, 54.) To afford Plaintiff more time to serve
26 Defendants, the Court continued the deadlines for briefing on the Original Motion and repeatedly
27 ordered Plaintiff to file proof of service of a copy of the Original Motion on Defendants. (See Docs.
28 45, 48, 50, 52, 55.) The Court also granted Plaintiff's request to file a motion for alternate service

1 under Federal Rule of Civil Procedure 5(b)(2)(D), setting forth its efforts to serve Defendant Jugpal.
 2 (Doc. 52.) Plaintiff filed neither a proof of service of the Original Motion nor a motion for alternate
 3 service under Rule 5(b)(2)(D). (*See Docket.*)

4 On May 25, 2023, an order issued for Plaintiff to show cause (“OSC”) within twenty-one
 5 days why the action should not be dismissed for its failure to comply with the Court’s orders and
 6 for failure to prosecute this case. (Doc. 56.) Upon receipt of Plaintiff’s reply to the OSC (Doc. 57),
 7 the Court discharged the OSC and granted Plaintiff’s request for an extension of time to serve
 8 Defendants. (Doc. 59.)

9 Plaintiff filed the present Motion on June 13, 2023, requesting that the Court award Plaintiff
 10 possession of the Trailers.³ (Doc. 65.) No opposition to the Motion has been filed. (*See Docket.*)
 11 In the Motion, Plaintiff contends that service of the Motion on Defendants is not required under
 12 Federal Rule of Civil Procedure 5(a)(2) and Local Rule 135(d) because Defendants were served
 13 with the complaint, they have failed to appear, they are in default, and the Motion does not assert a
 14 new claim against them.⁴ (*Id.* at 2.) In support of the Motion, Plaintiff also filed a declaration from
 15 its attorney, Douglas Smurr (Doc. 65 at 9–10 (“Smurr Decl.”)), and a declaration from Sonia Zahid,
 16 Plaintiff’s Assistant Vice President for Operations (Doc 65 at 11–14 (“Zahid Decl.”)), which was
 17 executed on June 1, 2021.

18 In the declaration, Sonia Zahid states that Defendants are wrongfully withholding the
 19 Trailers, and since the Trailers are being used for interstate transportation of long distance trucking,
 20 Plaintiff is unaware of the Trailers’ location. (Zahid Decl. ¶¶ 8, 10.) Sonia Zahid further states that
 21 the Trailers have not been taken for a tax, assessment, or fine pursuant to statute, and have not been
 22 seized under an execution against Plaintiff’s property. (Zahid Decl. ¶ 11.) Sonia Zahid states that
 23

24 ³ The Court granted Plaintiff’s request to withdraw its initial amended motion for default judgment filed on June 7,
 25 2023. (*See Doc. 67.*)

26 ⁴ Federal Rule of Civil Procedure 5(a)(2) provides that “[n]o service is required on a party who is in default for failing
 27 to appear,” except where a pleading asserts a new claim for relief. Here, Defendants were served with the complaint
 28 and failed to respond to that pleading or otherwise participate in this action, and the Motion does not assert a new
 claim for relief. Accordingly, the undersigned finds that Plaintiff properly served Defendants. *See Acosta v. Perez*,
 No: 1:19-cv-01224-AWI-EPG, 2021 WL 3910543, at *4 (E.D. Cal. Sept. 1, 2021); *see also Trujillo v. Malwa Food
 Mart Inc.*, No: 1:21-cv-01580-AWI-BAM, 2022 WL 1214849, at *2 n.1 (E.D. Cal. Apr. 25, 2022) (service of the
 motion for default judgment “is not required on a party who is in default for failing to appear.”) (citing Fed. R. Civ. P.
 5(a)(2)).

1 Defendants' possession of the Trailers, and the continued failure to turn over the property to Plaintiff
2 or provide their current location, has caused Plaintiff loss of revenue due to the Trailers'
3 depreciation. (Zahid Decl. ¶ 12.)

4 **IV. DISCUSSION**

5 **A. Legal Standard**

6 Federal Rule of Civil Procedure 55(b)(2) permits a court-ordered default judgment following
7 the entry of default by the clerk of the court under Rule 55(a). It is within the sole discretion of the
8 Court as to whether default judgment should be entered. *See Aldabe v. Aldabe*, 616 F.2d 1089, 1092
9 (9th Cir. 1980).

10 A defendant's default by itself does not entitle a plaintiff to a court-ordered judgment. *See*
11 *Draper v. Coombs*, 792 F.2d 915, 924–25 (9th Cir. 1986). Instead, the Ninth Circuit has determined
12 a court should consider seven discretionary factors, often referred to as the “*Eitel* factors,” before
13 rendering a decision on default judgment. *See Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir.
14 1986). The *Eitel* factors include (1) the possibility of prejudice to the plaintiff, (2) the merits of the
15 plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in
16 the action (5) the possibility of a dispute concerning material facts, (6) whether the default was due
17 to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure
18 favoring decisions on the merits. *See id.* “In applying this discretionary standard, default judgments
19 are more often granted than denied.” *Philip Morris USA, Inc. v. Castworld Prods., Inc.*, 219 F.R.D.
20 494, 498 (C.D. Cal. 2003) (quoting *PepsiCo, Inc. v. Triunfo-Mex, Inc.*, 189 F.R.D. 431, 432 (C.D.
21 Cal. 1999)).

22 **B. The *Eitel* Factors Favor Entry of Default Judgment**

23 In considering Plaintiff's Motion, the undersigned will address each of the *Eitel* factors in
24 turn below.

25 **1. Possibility of Prejudice to Plaintiff**

26 The first *Eitel* factor considers whether Plaintiff would suffer prejudice if default were not
27 entered. If the Motion is not granted, Plaintiff will effectively be denied a remedy until Defendants
28 participate and make an appearance in the litigation, which may never occur. *See Gilbert v.*

1 *Muthana*, No. 1:21-cv-01333-JLT-SKO, 2022 WL 2208513, at *3 (E.D. Cal. June 21, 2022).

2 “Denying Plaintiff a means of recourse is, by itself, sufficient to meet the burden imposed by this

3 factor.” *Id.* (quoting *Philip Morris*, 219 F.R.D. at 499 (“prejudice” exists where the plaintiff has

4 no “recourse for recovery” other than default judgment)). The undersigned finds that this factor

5 weighs in favor of default judgment. *See id.*, adopted by, 2022 WL 2918326 (E.D. Cal. July 25,

6 2022).

2. Merits of Plaintiff's Substantive Claim and Sufficiency of the Complaint

9 The second and third *Eitel* factors, relating to the merits of Plaintiff's claims and the
10 sufficiency of the complaint, can be discussed in tandem. *See Dr. JKL Ltd. v. HPC IT Educ. Ctr.*,
11 749 F. Supp. 2d 1038, 1048 (N.D. Cal. 2010) ("Under an *Eitel* analysis, the merits of plaintiff's
12 substantive claims and the sufficiency of the complaint are often analyzed together."). "[T]he
13 general rule is that well-pled allegations in the complaint regarding liability are deemed true." *Fair*
14 *Hous. of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 2002). Here, the merits of Plaintiff's claims
15 and the sufficiency of the complaint favor entry of default judgment.

16 “Claim and delivery” is a California state law remedy identical to the federal remedy known
17 as replevin; it is “a method of recovering property that is wrongfully being withheld by
18 another.” *Trans Pacific Nat. Bank v. UBS AG*, 2010 WL 2354165, No. C 09–4617 SBA, 2010 WL
19 2354165, at *4 (N.D. Cal. June 9, 2010); *see also Penske Truck Leasing Co., L.P. v. I-10 Towing &*

20 *Recovery, Inc.*, No. EDCV 18-2547 JGB (SPx), 2019 WL 6736905, at *3 (C.D. Cal. Mar. 11, 2019).
21 “Claim and delivery is not a separate action but is a remedy that permits a prevailing party to recover
22 both specific property and incidental damages.” *Xerox Corp. v. AC Square, Inc.*, No. 15-cv-04816-
23 DMR, 2016 WL 5898652, at *3 (N.D. Cal. Sept. 1, 2016). “To be entitled to this remedy, the
24 plaintiff must show (1) that it has a right to possess the equipment in question and (2) that [the
25 defendant] is in wrongful possession of the equipment.” *Commercial Credit Grp. Inc. v. SHR*
26 *Transport, Inc.*, No. 2:21-cv-01020 JAM AC, 2022 WL 8048993, at *3 (E.D. Cal. Oct. 14, 2022)
27 (citations omitted). Here, Plaintiff has attached documents consisting of the loan agreement, the
28 UCC Financing Statement, each Trailer’s Certificate of Title, and the declaration of Sonia Zahid to

1 the complaint and the Motion showing its right to possession of the property at issue and has alleged
2 that Defendants are in wrongful possession of the Trailers. *See Commercial Credit Grp. Inc.*, 2022
3 WL 8048993, at *3.

4 According to the terms of the agreement, which is attached to the complaint, Defendants
5 assigned and granted Plaintiff a security interest and lien in personal property consisting of three
6 2016 Utility Reefer Trailers with Carrier 7400Xs, which have been identified by VIN number and
7 serial number. (Compl. ¶¶ 1, 8, 12; Ex. 1 pp. 1–5; Ex. 2 at p. 1.) Plaintiff filed a UCC Financing
8 Statement confirming Plaintiff's security interest in the Trailers as collateral and the lien pursuant
9 to the agreement between the parties. (Compl. ¶ 9; Ex. 3 at pp. 1–2.) Each Trailer's Certificate of
10 Title issued by the State of California listed Plaintiff as the registered lienholder. (Compl. ¶ 9; Ex.
11 4 at pp. 1–3.)

12 Sonia Zahid, Plaintiff's Assistant Vice President for Operations, states that Defendants are
13 wrongfully withholding the Trailers after failing to make payments of the outstanding installments
14 owing to Plaintiff in violation of the terms of the agreement, and since the Trailers are being used
15 for interstate transportation of long distance trucking, Plaintiff is unaware of the Trailers' location.
16 Plaintiff is therefore unable to repossess the property. (Zahid Decl. ¶¶ 8, 10.) Sonia Zahid states
17 that Defendants have failed to turn over the Trailers to Plaintiff or to provide their current location
18 despite defaulting on the loan. (Zahid Decl. ¶ 12.)

19 The undersigned finds that the allegations of the complaint, the attached documents, and the
20 declaration of Sonia Zahid establish the merits and sufficiency of Plaintiff's claim for claim and
21 delivery. *See, e.g., Momentum Com. Funding, LLC v. Project Storm, LLC*, No. 2:21-cv-0981-KJM-
22 KJN, at *4–5 (E.D. Cal. July 18, 2022) (finding the plaintiff sufficiently stated a claim for claim and
23 delivery where the terms of the agreement showed plaintiff had a right to the collateral, defendant
24 defaulted on the lease, and its failure to comply with plaintiff's subsequent requests for the collateral
25 amounted to wrongful possession); *Penske Truck Leasing Co., L.P.*, 2019 WL 6736905, at *3
26 (finding the plaintiff sufficiently stated a claim for claim and delivery where the complaint alleged
27 defendant continued to have possession of the trucks, plaintiff demanded their return, and defendant
28 refused to deliver the trucks, as shown by their continued wrongful possession). Accordingly, the

1 second and third *Eitel* factors weigh in favor of default judgment.

2 **3. Sum of Money at Stake in the Action**

3 Under this *Eitel* factor, “the court must consider the amount of money at stake in relation to
4 the seriousness of Defendant’s conduct.” *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172,
5 1176–77 (C.D. Cal. 2002).

6 As a preliminary matter, the undersigned recommends rejecting Plaintiff’s contention that it
7 is entitled to \$226,102.33. (Doc. 65 at 6.) As noted above, the Trailers have a combined
8 approximate total value of \$185,850.00. (Comp. ¶ 11.) In the Motion, Plaintiff references monetary
9 requests made in the complaint, but lists possession of the Trailers as the sole remedy sought
10 pursuant to Motion. (See Doc. 65 at 8 (under the heading titled “Conclusion and Relief Requested,”)
11 Plaintiff contends “Defendants have knowingly defaulted and therefore the only possibility of
12 reaching a decision on the merits is for this Court to grant [Plaintiff’s] request for default judgment
13 awarding [Plaintiff] possession of the Trailers.”). The Trailers were specifically identified in the
14 agreement at issue. *See Commercial Credit Grp. Inc.*, 2022 WL 8048993, at *4; *see, e.g., People’s*
15 *Untied Equipment Fin. Corp. v. RST Cranes*, No. 1:16-cv-00207 DAD JLT, 2016 WL 8673050, at
16 *3 (E.D. Cal. Sept. 9, 2016) (“However, here, the plaintiff seeks only to recover the leased property.
17 Though there is a significant amount of money at stake, that is not an issue before this Court.”).
18 Accordingly, the undersigned finds that this factor weighs in favor of granting default judgment.

19 **4. Possibility of a Dispute Concerning the Material Facts**

20 Under the fifth *Eitel* factor, the Court considers whether there is a possibility of a dispute
21 over any material fact. *See Love v. Griffin*, No. 18-cv-00976-JSC, 2018 WL 4471073, at *5 (N.D.
22 Cal. Aug. 20, 2018); *Ridola v. Chao*, No. 16-cv-02246-BLF, 2018 WL 2287668, at *13 (N.D. Cal.
23 May 18, 2018). Because Defendants have not appeared, they are not entitled to dispute the facts
24 established by Plaintiff. This factor favors default judgment. *See Ramirez v. Michael Cookson*
25 *Constr., Inc.*, No. 1:22-cv-01623-SKO, 2023 WL 4743050, at *6 (E.D. Cal. July 25, 2023).
26 Additionally, as noted above, Plaintiff has attached to its complaint the agreement itself, the UCC
27 Financing Statement, and each Trailer’s Certificate of Title issued by the State of California listing
28 Plaintiff as the registered lienholder. (See Compl. Ex. 1–4.) “In light of this, there is a reduced

1 possibility of a dispute concerning the material facts.” *See North American Co. for Life and Health*
2 *Ins. V. Moua*, No. 1:22-cv-01293-SKO, 2023 WL 4409570, at *4 (E.D. Cal. July 7, 2023).

3 **5. Whether Default Was Due to Excusable Neglect**

4 Under the sixth *Eitel* factor, the Court considers whether the default was due to excusable
5 neglect. There are no facts in the record to suggest, much less demonstrate, Defendants’ failure to
6 respond to the complaint or defend against the Motion is the result of excusable neglect. This factor,
7 therefore, favors the entry of default judgment. *See Ramirez*, 2023 WL 4743050, at *6.

8 **6. Policy Favoring Decisions on the Merits**

9 The seventh *Eitel* factor, which is the strong policy favoring decisions on the merits, weighs
10 against default judgment. In cases where the other *Eitel* factors weigh in favor of default judgment,
11 the seventh factor will not be an impediment to granting default judgment. *See Ridola*, 2018 WL
12 2287668, at *13 (“Although federal policy favors decision on the merits, Rule 55(b)(2) permits entry
13 of default judgment in situations, such as this, where a defendant refuses to litigate.”). Although the
14 Court favors resolving cases on the merits after adversarial proceedings, it cannot force Defendants
15 to participate. *See North American Co. for Life and Health Ins.*, 2023 WL 4409570, at *5.

16 As set forth above, all of the *Eitel* factors with the exception of the seventh factor weigh in
17 favor of default judgment. The second and third factors, which are the most important, strongly
18 favor default judgment. Accordingly, the undersigned will recommend that Plaintiff’s motion for
19 default judgment against Defendants be granted.

20 **C. Relief Requested**

21 Having concluded that Plaintiff is entitled to default judgment, the undersigned must
22 consider whether Plaintiff has established entitlement to the relief requested. As noted above,
23 Plaintiff previously filed a notice of application for writ of possession as to the three Trailers (Doc.
24 28), and the only requested remedy in the Motion is possession of the Trailers.

25 California Code of Civil Procedure § 512.010 allows a plaintiff to apply for a writ to recover
26 property. Such an application should be executed under oath and include:

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1 (1) A showing of the basis of the plaintiff's claim and that the plaintiff is entitled to
2 possession of the property claimed. If the basis of the plaintiff's claim is a written
3 instrument, a copy of the instrument shall be attached.

4 (2) A showing that the property is wrongfully detained by the defendant, of the manner
5 in which the defendant came into possession of the property, and, according to the best
6 knowledge, information, and belief of the plaintiff, of the reason for the detention.

7 (3) A particular description of the property and a statement of its value.

8 (4) A statement, according to the best knowledge, information, and belief of the
9 plaintiff, of the location of the property and, if the property, or some part of it, is within
10 a private place which may have to be entered to take possession, a showing that there is
11 probable cause to believe that such property is located there.

12 (5) A statement that the property has not been taken for a tax, assessment, or fine,
13 pursuant to a statute; or seized under an execution against the property of the plaintiff;
14 or, if so seized, that it is by statute exempt from such seizure.

15 Cal. Civ. Proc. Code § 512.010(b).

16 Here, Plaintiff requests possession of the Trailers. As described above, Plaintiff attaches the
17 necessary documentation to the complaint and the Motion showing its right to possession of the
18 Trailers and that Defendants are wrongfully possessing them. *See Commercial Credit Grp. Inc.*,
19 2022 WL 8048993, at *3. As for the first and third requirements under California Code of Civil
20 Procedure § 512.010, Plaintiff provided a copy of the written agreement between the parties, in
21 which Defendants assigned and granted Plaintiff a security interest and lien the three Trailers, which
22 were specifically identified by VIN number and serial number. (Compl. ¶¶ 1, 8, 12; Ex. 1 pp. 1–5;
23 Ex. 2 at p. 1.) Plaintiff also provided copies of the UCC Financing Statement filed pursuant to the
24 agreement and each Trailer's Certificate of Title issued by the State of California listing Plaintiff as
25 the registered lienholder. (Compl. ¶ 9; Ex. 3 at pp. 1–2; Ex. 4 at pp. 1–3.) The complaint also
26 alleges that the Trailers have a combined approximate total value of \$185,850 based on market
27 comparisons for trailer models of similar type and age. (Comp. ¶ 11.) The undersigned finds that
28 Plaintiff has satisfied the first and third requirements by showing its entitlement to possession of the
Trailers, the basis of its claim, a particular description of the property, and a statement of its value.
See, e.g., Penske Truck Leasing Co., L.P., 2019 WL 6736905, at *5 (finding the plaintiff satisfied
the first and third requirements by providing true and correct copies of the certificates of title for the

1 trucks, their vehicle identification numbers, and information regarding the trucks' rental value
2 through average monthly revenue for similar trucks).

3 As for the second and fourth requirements under California Code of Civil
4 Procedure § 512.010, Plaintiff submitted a declaration from Sonia Zahid, Plaintiff's Assistant Vice
5 President for Operations, which provided as follows: "Defendants are wrongfully withholding the
6 Trailers;" since the Trailers are "being used in interstate transportation of long distance trucking,
7 currently, [Plaintiff] is unaware of [their] location;" and Defendants continue to fail "to turn over
8 the property to [Plaintiff] or to provide [their] current location." (Zahid Decl. ¶¶ 8, 10, 12.) The
9 undersigned finds that Plaintiff has sufficiently satisfied the second and fourth requirements by
10 showing that the property is wrongfully detained by Defendants and describing the location of the
11 Trailers to the best of its knowledge. *See, e.g., Penske Truck Leasing Co., L.P.*, 2019 WL 6736905,
12 at *5 ("Given [the defendant's] lack of responsiveness in this action, the Court finds [the plaintiff]
13 has satisfied the statutory requirement that it provide all possible information regarding the reason
14 for the trucks' detention."). As for the fifth requirement, Sonia Zahid states that the Trailers have
15 not been taken for a tax, assessment, or fine pursuant to statute, and have not been seized under an
16 execution. (Zahid Decl. ¶ 11.) The undersigned finds that Plaintiff has successfully satisfied the
17 fifth requirement in providing a statement that the property has not been taken for a tax, assessment,
18 or fine.

19 In sum, Plaintiff has met all five requirements under California Code of Civil Procedure
20 § 512.010. Because Plaintiff has established entitlement to the relief requested, the undersigned
21 recommends granting Plaintiff's application for writ of possession for the three Trailers (Doc. 28).
22 *See, e.g., MGSY Corp. v. LiveUniverse, Inc.*, No. 09-CV-0570 GAF (AGRx), 2010 WL 11596708,
23 at *10 (C.D. Cal. Feb. 25, 2010) ("Having proved up the case on the merits [pursuant to a motion
24 for default judgment], and having established their right to the equipment, the Court agrees that the
25 issuance of a writ of possession is appropriate under the present circumstances."); *accord Ascentium
Cap., LLC v. Aero Transport, Inc.*, No. 1:16-cv-1575-LJO-BAM, 2017 WL 1968335, at *5 (E.D.
27 Cal. May 12, 2017).

28

V. CONCLUSION AND RECOMMENDATIONS

Based on the foregoing, IT IS HEREBY RECOMMENDED THAT:

1. Plaintiff's motion for default judgment against Defendants (Doc. 65) be granted;
2. Plaintiff's application for writ of possession (Doc. 28) be granted; and
3. The Clerk of Court close this case.

These findings and recommendations are submitted to the district judge assigned to this action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court’s Local Rule 304. Within twenty-one (21) days of service of this recommendation, any party may file written objections to these findings and recommendations with the Court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The district judge will review the magistrate judge’s findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within the specified time may waive the right to appeal the district judge’s order. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014).

IT IS SO ORDERED.

Dated: August 22, 2023

/s/ Sheila K. Oberto

UNITED STATES MAGISTRATE JUDGE